



Property Casualty Insurers
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Surplus Lines Insurance

What's in a Name ...

It's easy to see why the words "unauthorized" or "unlicensed", when used in conjunction with Surplus Lines Insurance (Non-admitted Insurance), would give the impression that this type of insurance is not regulated, but that would be a mistake.

Surplus Lines Insurance is regulated!

Every state, including yours, has rules and regulations within its Insurance Code that are specifically written to govern Surplus Lines Insurance. In addition, the same statutory and common law rules that govern bad faith for licensed, admitted insurers apply equally to non-admitted insurers.

While the non-admitted insurance company may not be 'licensed' in the same state as its customer's operations, it is licensed in either the state or the country in which it is domiciled.

Non-admitted insurers have to be 'eligible' in the state where the customer is located in order to accept business. Part of the eligibility standard required under state law, and reinforced by federal law, includes meeting capitalization thresholds. In most cases, a non-admitted insurer has to put more money in reserve to meet the required capitalization threshold than its licensed, admitted insurer counterpart.

Any surplus lines business placed with a non-admitted insurance company must be handled through a surplus lines broker who is required to meet state licensing standards. These specially trained professionals are responsible for paying taxes and ascertaining that their customers' insurance needs may only be met by a non-admitted insurance company in accordance with the surplus lines laws of your state.



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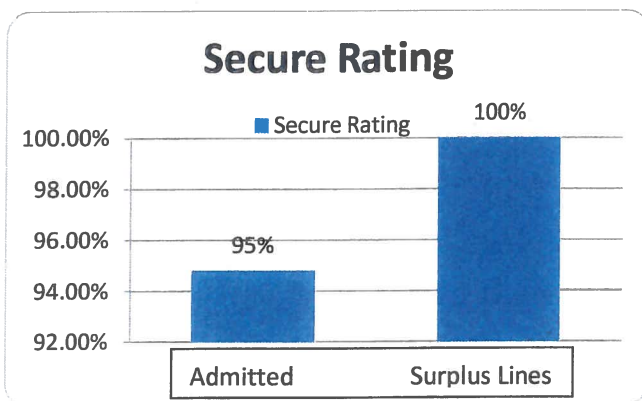
Who is the Surplus Lines Market?

There is a perception that Surplus Lines Insurance (non-admitted insurance) represents a 'Wild West' of temporary insurers charging irresponsible premiums for questionable coverage.

The reality proves that this perception couldn't be further from the truth.

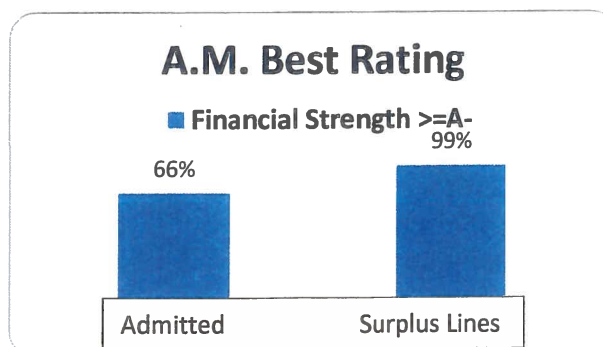
A.M. Best, a credit rating agency with a focus on the insurance industry, has monitored and reported on the non-admitted insurance market for the past twenty years. They publish an annual special report providing information to both those involved in the insurance industry and insurance regulators and legislators.

Here's what A.M. Best had to say about Surplus Lines Insurance:



A.M. Best reports that non-admitted insurers have a higher Secure Rating than their admitted counterparts, an important factor for businesses whose unique and innovative risks brought them to this market for insurance.

Financial capacity and a deep underwriting expertise result in better than average financial ratings for non-admitted insurers



(Sec. 523) Prohibits a state from collecting fees relating to licensure of a surplus lines broker in the state unless it has a regulatory mechanism in effect for participation in the national insurance producer database of the National Association of Insurance Commissioners (NAIC), or any other equivalent uniform national database.

(Sec. 524) Prohibits a state from establishing eligibility criteria for nonadmitted insurers domiciled in a U.S. jurisdiction except in conformance with specified provisions of the Non-Admitted Insurance Model Act,¹ unless the state has adopted nationwide uniform requirements, forms, and procedures developed in accordance with this Act that include alternative nationwide uniform eligibility requirements.

Prohibits a state from prohibiting a surplus lines broker from placing nonadmitted insurance with, or procuring nonadmitted insurance from, a nonadmitted insurer

domiciled outside the United States and listed on the NAIC International Insurers Department Quarterly Listing of Alien Insurers.

(Sec. 525) Cites conditions with which a surplus lines broker seeking to procure or place nonadmitted insurance in a state for an exempt commercial purchaser must comply in order to win exemption from any state requirement to make a due diligence search to determine whether the full amount or type of insurance sought by such exempt commercial purchaser can be obtained from admitted insurers.

(Sec. 526) Requires the Comptroller General to study and report to Congress on the nonadmitted insurance market in order to determine the effect of this title upon the size and market share of the nonadmitted insurance market for providing coverage typically provided by the admitted insurance market. (Due January 21, 2014)

Part II: Reinsurance

(Sec. 531) Prohibits a state from denying credit for reinsurance for the insurer's ceded risk if the domiciliary state of an insurer purchasing reinsurance (the ceding insurer) recognizes such credit and: (1) is either an NAIC-accredited state; or (2) has financial solvency requirements substantially similar to NAIC accreditation requirements.

Preempts the extraterritorial application of the laws, regulations, or other actions of a non-domiciliary state of a ceding insurer (except those related to taxes and assessments on insurance companies or insurance income) to the extent that they: (1) restrict or eliminate the rights of the ceding insurer or the assuming insurer to resolve disputes through contractual arbitration not inconsistent with federal law; (2) require that a certain

state's law shall govern the reinsurance contract, its requirements, or any disputes arising from it; (3) attempt to enforce a reinsurance contract on terms different from those set forth in it, if those terms are not inconsistent with this subtitle; or (4) otherwise apply the laws of the state to reinsurance agreements of ceding insurers not domiciled in that state.

(Sec. 532) Reserves to a reinsurer's domiciliary state sole responsibility for regulating the reinsurer's financial solvency if it is either NAIC-accredited, or has financial solvency requirements substantially similar to NAIC.

Prohibits any other state from requiring a reinsurer to provide financial information in addition to that required by its NAIC-compliant domiciliary state.

Part III: Rule of Construction

Prohibits any construction of this Act to modify, impair, or supersede the application of the antitrust laws.

States that any implied or actual conflict between this Act and any amendments to this Act and the antitrust

laws shall be resolved in favor of the operation of the antitrust laws.

¹ NAIC Non-Admitted Insurance Model Act (Model 870, 1997):

Section 5A(2) – "Each insurer is authorized to write the type of insurance in its domiciliary jurisdiction"

Section 5C(2)(a) – "Has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction which equals the greater of: (i)(i) The minimum capital and surplus requirements under the law of this state; or (ii)\$15,000,000"

The minimum capital and surplus requirements can be waived by the commissioner based on quality of management, capital and surplus of any parent company, market availability or other factors, provided the insurer has capital and surplus of at least \$4,500,000.

\$30,000,000, as such amount is adjusted pursuant to clause (ii).

(V) The person is a municipality with a population in excess of 50,000 persons.

(ii) Effective on the fifth January 1 occurring after the date of the enactment of this subtitle and each fifth January 1 occurring thereafter, the amounts in subclauses (I), (II), and (IV) of clause (i) shall be adjusted to reflect the percentage change for such 5-year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

(6) HOME STATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term “home State” means, with respect to an insured—

(ii) the State in which an insured maintains its principal place of business or, in the case of an individual, the individual’s principal residence; or

(iii) if 100 percent of the insured risk is located out of the State referred to in clause (i), the State to which the greatest percentage of the insured’s tax-able premium for that insurance contract is allocated.

(B) AFFILIATED GROUPS.—If more than 1 insured from an affiliated group are named insureds on a single non-admitted insurance contract, the term “home State” means the home State, as determined pursuant to subparagraph (A), of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

(7) INDEPENDENTLY PROCURED INSURANCE.—The term “independently procured insurance” means insurance procured directly by an insured from a nonadmitted insurer.

(8) NAIC.—The term “NAIC” means the National Association of Insurance Commissioners or any successor entity.

(9) NONADMITTED INSURANCE.—The term “nonadmitted insurance” means any property and casualty insurance permitted to be placed directly or through a surplus lines broker with a nonadmitted insurer eligible to accept such insurance.

subparagraph referred to as "CPCU") issued by the American Institute for CPCU/Insurance Institute of America;

(BB) a designation as an Associate in Risk Management (ARM) issued by the American Institute for CPCU/Insurance Institute of America;

(CC) a designation as Certified Risk Manager (CRM) issued by the National Alliance for Insurance Education & Research;

(DD) a designation as a RIMS Fellow (RF) issued by the Global Risk Management Institute; or

(EE) any other designation, certification, or license determined by a State insurance commissioner or other State insurance regulatory official or entity to demonstrate minimum competency in risk management;

(ii) (I) has at least 7 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; and

(II) has any 1 of the designations specified in subitems (AA) through (EE) of clause (i)(II)(bb);

(iii) has at least 10 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; or

(iv) has a graduate degree from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by a State insurance commissioner or other State regulatory official or entity to demonstrate minimum competence in risk management.

(14) REINSURANCE.—The term "reinsurance" means the assumption by an insurer of all or part of a risk undertaken originally by another insurer.

(15) SURPLUS LINES BROKER.—The term "surplus lines broker" means an individual, firm, or corporation which is licensed in a State to sell, solicit, or negotiate insurance on properties, risks, or exposures located or to be performed in a State with nonadmitted insurers.

